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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,027	10/21/2003	Jon Muskin	Mus-01	4679
<div>43536 7590 09/26/2007</div> <div>MUSKIN & CUSICK LLC</div> <div>30 Vine Street</div> <div>SUITE 6</div> <div>Lansdale, PA 19446</div>				
			<div>EXAMINER</div> <div>HARPER, TRAMAR YONG</div>	
			<div>ART UNIT</div> <div>3714</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE</div> <div>09/26/2007</div>	<div>DELIVERY MODE</div> <div>PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/689,027

Applicant(s)

MUSKIN, JON

Examiner

Tramar Harper

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-44 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, 15, 20, & 31-44, drawn to a method for playing video poker comprising receiving a first bet that corresponds to a payout of a final hand based on a first payable, receiving a second bet or offering a second bet that corresponds to a payout of a final hand based on a second payable, allowing the player to hold and discards cards, replacing cards for forming a final hand, and paying the first wager and second wager.
- II. Claims 14-19, drawn to a method of automatically generating a payable comprising obtaining payouts for each rank by calculating probabilities for being dealt each rank of a plurality of ranks and dividing the probabilities by a number of possible paying ranks.
- III. Claims 21-23, drawn to a method of automatically generating a payable comprising obtaining payouts for each respective event by calculating probabilities for an occurrence of each of a series of events and dividing the probabilities by a number of events with greater than 0 probability.
- IV. Claims 24-30, drawn to a method for playing video poker comprising providing an additional feature to player. The additional feature comprising allowing a player to place an additional bet after dealt initial

cards and paying the bet based on a payable based on the player's initial cards.

The inventions are distinct, each from the other because of the following reasons:

Group 1 discloses a method for playing video poker comprising receiving an initial bet, dealing a first hand of cards to the player, allowing the player to select any number of cards to discard, offering a second bet, replacing the discarded cards to form a final hand, determining a rank of the final hand, paying the initial bet based on the final hand rank according to a first payable, and paying the second bet if the player chose to make the second bet. Groups 2-4 do not disclose a method for playing video poker comprising receiving an initial bet, dealing a first hand of cards to the player, allowing the player to select any number of cards to discard, offering a second bet, replacing the discarded cards to form a final hand, determining a rank of the final hand, paying the initial bet based on the final hand rank according to a first payable, and paying the second bet if the player chose to make the second bet. Thus, Group 1 is considered to relate to a different general inventive concept in comparison to the subject matters of Groups 2-4.

Group 2 discloses a method of automatically generating a payable comprising obtaining payouts for each rank by calculating probabilities for being dealt each rank of a plurality of ranks and dividing the probabilities by a number of possible paying ranks. Groups 1 & 3-4 do not disclose a method of automatically generating a payable comprising obtaining payouts for each rank by calculating probabilities for being dealt each rank of a plurality of ranks and dividing the probabilities by a number of possible

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paying ranks. Thus, Group 2 is considered to relate to a different general inventive concept in comparison to the subject matters of Groups 1 & 3-4.

Group 3 discloses a method of automatically generating a payable comprising obtaining payouts for each respective event by calculating probabilities for an occurrence of each of a series of events and dividing the probabilities by a number of events with greater than 0 probability. Groups 1-2 & 4 do not disclose a method of automatically generating a payable comprising obtaining payouts for each respective event by calculating probabilities for an occurrence of each of a series of events and dividing the probabilities by a number of events with greater than 0 probability. Thus, Group 3 is considered to relate to a different general inventive concept in comparison to the subject matters of Groups 1-2 & 4.

Group 4 discloses a method for playing video poker comprising providing an additional feature to player. The additional feature comprising allowing a player to place an additional bet after dealt initial cards and paying the bet based on a payable based on the player's initial cards. Groups 1-3 do not disclose a method for playing video poker comprising providing an additional feature to player. The additional feature comprising allowing a player to place an additional bet after dealt initial cards and paying the bet based on a payable based on the player's initial cards. Thus, Group 4 is considered to relate to a different general inventive concept in comparison to the subject matters of Groups 1-3.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required

because the inventions have acquired a separate status in the art due to their recognized divergent subject matter and require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Species

Within Group 1 the application contains claims directed to the following patentably distinct species:

Species 1: Claims 1-13, 15, 20, & 31-34.

Species 2: Claims 35-37.

Species 3: Claims 38-40.

Species 4: Claims 41-43.

Species 5: Claim 44.

The species are independent or distinct because:

-**Species 1** is a method of playing video poker comprising receiving an initial bet, dealing a first hand of cards to the player, allowing the player to select any number of cards to discard, offering a second bet e.g. player's discretion to accept or decline offer, replacing the discarded cards to form a final hand, determining a rank of the final hand, paying the initial bet based on the final hand rank according to a first payable, and paying the second bet if the player chose to make the second bet.

-**Species 2** is a method for playing video poker comprising receiving an initial bet, dealing a first hand of cards to the player, allowing the player to select any number of cards to discard, receiving a second bet, replacing the discarded cards to form a final hand, determining a rank of the final hand, paying the initial bet based on the final hand

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rank according to a first payable, and paying the second bet based on rank according to a second payable. The second payable is automatically generated based on the held cards. Each award is based on probabilities of forming each respective rank on a draw based on the held and discarded cards, wherein the secondary awards are sorted from highest to lowest corresponding to their respective probabilities to form respective ranks on the draw ordered lowest to highest.

-Species 3 is a method for playing video poker comprising receiving an initial bet, dealing a first hand of cards to the player, allowing the player to select any number of cards to discard, receiving a second bet, replacing the discarded cards to form a final hand, determining a rank of the final hand, paying the initial bet based on the final hand rank according to a first payable, and paying the second bet based on rank according to a second payable. The second payable is automatically generated based on the held cards. Each award is based on probabilities of forming each respective rank on a draw based on the held and discarded cards, wherein the secondary awards for respective ranks that are not possible to draw are automatically given a value of zero.

-Species 4 is a method for playing video poker comprising receiving an initial bet, dealing a first hand of cards to the player, allowing the player to select any number of cards to discard, determine if the player can place a second wager, replacing the discarded cards to form a final hand, determining a rank of the final hand, paying the initial bet based on the final hand rank according to a first payable, and paying the second bet if the player is allowed to the second bet based on rank according to a second payable. The second payable is automatically generated based on the held

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cards. Each award is based on probabilities of forming each respective rank on a draw based on the held and discarded cards, wherein determining based on the held and discarded cards, the forming of one of the ranks is not possible and if it is not possible preventing the player from wagering the second wager otherwise allowing the second wager.

-Species 5 is a method for playing video poker comprising receiving an initial bet, dealing a first hand of cards to the player, allowing the player to select any number of cards to discard, receiving a second bet, replacing the discarded cards to form a final hand, determining a rank of the final hand, paying the initial bet based on the final hand rank according to a first payable, and paying the second bet based on the rank according to a second payable. The second wager wins when the final hand is a rank on the first payable was possible to form on the draw considering the held cards and discards.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there are no generic claims.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

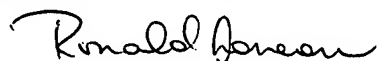
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tramar Harper whose telephone number is (571) 272-6177. The examiner can normally be reached on 7:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ronald Laneau
Primary Patent Examiner
Art Unit 3714

TH

9/18/07